

AGREEMENT

THIS AGREEMENT is made and entered into on this 8th day of November, 2011, by and between GRAND MASTERS DRAGON BOAT CLUB OF THE VILLAGES, INC. (hereinafter "GMDBC") and Sumter County, Florida (hereinafter "the County"). It is hereby agreed as follows:

Preliminary Statements

WHEREAS, the GMDBC is an incorporated entity that affirmatively represents to the County that it lawfully operates its programs and has, at the time of this Agreement, General Liability Insurance;

WHEREAS, GMDBC wishes to store one Dragon Boat at Lake Miona Park in Sumter County, Florida;

WHEREAS, the County is amenable to permitting GMDBC to store one Dragon Boat under the terms and conditions expressed herein;

WHEREAS, GMDBC has expressed interest in building a permanent storage shed at Lake Miona Park and seeks to, in the interim, store one Dragon Boat along the side of the existing access dock at Lake Miona Park;

WHEREAS, the hours of operation for Lake Miona Park are from dawn to dusk and any activities outside of daylight hours are prohibited.

Terms and Conditions

1. Recitals. The parties agree that the recitals which comprise the Preliminary Statements to this Agreement are all true and correct and are fully intended by the parties to be completely incorporated herein as part of this Agreement.

2. Term. It is the intention of the parties that the term of this Agreement shall be one year with a subsequent renewal term of one year. Said renewal may only be exercised by the County. A term of this Agreement may be shortened by the County in the event that the Board of County Commissioners approves the installation of a permanent storage area or structure for storage of the Dragon Boat, the parties reach an Agreement on the terms of such an installation or designation and the area or structure is constructed prior to the end of the original term or the renewal term.

3. Covenants of GMDBC. Grand Masters Dragon Boat Club hereby agrees to the following covenants:

- a. To comply with all existing policies of the County as it relates to its parks, as well as any rules or policies specific to Lake Miona Park, and to comply with any future policies that govern the County's parks;
- b. To exercise due and appropriate care while utilizing County park's or facilities for club activities and ensuring that GMDBC's activities are not unreasonably impairing the ability of others to enjoy said parks or facilities;

- c. To ensure that areas utilized by GMDBC are left in the manner in which they existed prior to GMDBC arriving or beginning program activities;
- d. To clean up after GMDBC program participants, including the removal of trash or refuse left by GMDBC in a sanitary fashion and ensure that facilities are returned to that state in which they existed each day prior to GMDBC partaking in its activities;
- e. To always seek permission before taking photographs of any non-GMDBC person, request permission to use said photographs elsewhere and obtain written releases from the parties who are the subject of the photographs and the County if permission is granted;
- f. To provide any and all requested documentation as to the County, including but not limited to corporate documents and proof of insurance;
- g. To report any incident to County staff;
- h. To ensure and verify through appropriate process, including background checks, that no individual associated with the program who will be present at any Sumter County park or other facility is a Sexual Predator or Sexual Offender as defined by Florida Statutes Chapter 775, Florida Statutes Chapter 943, any similar or analogous law of another jurisdiction or any statute which is intended by the Legislature to be a successor to any of the aforementioned statutes;
- i. To ensure that the storage of the boat does not impede or disrupt ramp activities or the activities of other parties in any way;
- j. To ensure that the Dragon Boat is removed from the water each day and adequately secured in the area designated by the County for storage;
- k. To only conduct activities at the County's parks during regular park (daylight) hours;
- l. To hold the County fully harmless and indemnify the County for any damage to the Dragon Boat, paddles or any other items which are stored by GMDBC or its members, guests or the like at Lake Miona Park whether caused by the County's negligence, intentional acts, omissions or otherwise;
- m. To cause to be repaired by an individual or corporation approved by the County, any damage caused to any County property or personal property of another by the storage or operation of the Dragon Boat or other materials reasonably involved in GMDBC's activities; in the alternative, the County may make such repairs on its own accord and GMDBC shall reimburse the County for any costs, labor or other expenses reasonably expended to make reasonable repairs of any such damage;

4. Worker's Compensation Insurance. GMDBC shall maintain its own Worker's Compensation Insurance and Employer's Liability, as they may be respectively applicable, in accordance with Florida Statutes Chapter 440.

5. Indemnification. GMDBC agrees to and shall indemnify, defend and hold harmless the County, its offices, agents and employees from and against any and all claims, losses or liability, or any portion thereof, including attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to the GMDBC's own employees or participants or damage to property occasioned by the storage or operation of the Dragon Boat by GMDBC at County parks or facilities, a negligent act, omission or failure of the GMDBC or the County, including the regular operation of GMDBC's Dragon Boat(s) on the waters of Lake Miona.

6. General Liability Insurance. GMDBC shall continuously have in effect for the duration of this Agreement, at a minimum, an Insurance Policy of General Liability from an insurance company having a financial rating of A- or higher as set forth by A.M. Best. In addition, GMDBC agrees that:

- a. Said policy shall have a limit of liability not less than \$1,000,000.00 per Occurrence and \$2,000,000.00 in the Annual Aggregate.
- b. The policy shall not contain any endorsement(s) excluding nor limiting independent contractors, broad form property damage, contractual liability or cross liability.
- c. The self-insured retention or deductible shall not exceed \$25,000.00.

7. Certificates of Insurance. GMDBC shall provide the County with Certificate(s) of Insurance clearly evidencing that all coverages, limits and endorsements required herein or which are otherwise requested by the County from time to time are in full force and effect. A minimum thirty day endeavor to notify due to cancellation or non-renewal of coverage shall be indentified on each Certificate of Insurance In the even the County is notified that a required insurance coverage will cancel or expire during the period of this Contract, the GMDBC agrees to furnish the County prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by the County, the GMDBC shall cease providing the program or otherwise utilizing County facilities for storage pursuant to this Agreement unless all required insurance remains in effect. Nothing contained herein shall permit the GMDBC to permit insurance to lapse in order to avoid its obligations under the Contract and any such cessation of insurance prior to the end of the term shall not alleviate the GMDBC of its liability for damages incurred by the County, should such damages exist. In the event that the GMDBC fails to maintain insurance as set forth herein, the County shall have the right, but not the obligation to purchase replacement insurance and the GMDBC agrees to reimburse any premiums or expenses incurred by the County as a result.

- a. GMDBC agrees that the Certificate(s) of Insurance shall:

- i. Clearly indicate the County has been endorsed on the Commercial General Liability with a CG 2010 Additional Insured – Owners, Lessees, or Contractors, or CG 2026 Additional Insured – Owners, Lessees, or contractors – Scheduled Person or Organization endorsement, or similar endorsement providing equal or greater Additional Insured coverage.
- ii. Clearly identify each policy’s limits, flat and percentage deductibles, sub limits or self-insured retentions which exceed the amounts or percentages set forth herein.
- iii. Clearly indicate a thirty day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
- iv. Have the name of the organization endorsed as the additional insured for all endorsements be listed as “Sumter County Board of County Commissioners.”
- v. Forward original to and clearly indicate Certificate Holder and Additional Insured as:

1. Sumter County Board of County Commissioners
 Attention: Financial Services
 7375 Powell Road, Suite 206
 Wildwood, FL 34785

8. Deductibles, Coinsurance Penalties, etc. The GMDBC shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty or self-insured retention, including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention or coverage exclusion or limitation.

9. Waiver of Subrogation. The GMDBC shall provide a waiver of subrogation in favor of the County for each required policy providing coverage during the life of the Contract. When required by the insurer, or should a policy condition not permit the GMDBC to enter into a pre-loss agreement to waive subrogation without an endorsement, then the GMDBC shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement or voids coverage should the GMDBC enter into such an Agreement on a pre-loss basis.

10. County’s Right to Revise or Reject. The County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies which fail to meet the criteria stated herein or which are otherwise, in the sole discretion of the County, inadequate or deficient, or any insurer(s) providing coverage due to its poor financial condition, failure to operate legally or for any other reason which the County, in

its sole discretion, deems fit. In such an event, the County shall provide the GMDBC written notice of such a revision or rejection.

11. No Representation of Coverage Adequacy. The coverage limits or endorsements, as required herein or which may from time to time be amended by the County in its sole discretion, protect the interests of the County and these coverages, limits or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types of limits of coverage to protect the GMDBC against any loss exposures, whether as a result of the programs, issues or storage arrangements detailed herein or otherwise.

12. The County's Covenants. The County hereby agrees to the following covenants:

- a. To provide a designated location at Lake Miona Park where GMDBC may store one Dragon Boat.

13. Waiver. Any waiver by any party of a breach of any provision of this Agreement by any other party shall not operate or be construed as a waiver of any subsequent breach by that party. To be effective, any waiver must be in writing and signed by the applicable party (with the same formalities as this Agreement).

14. Binding Effect. The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

15. Governing Law and Submission to Jurisdiction. This Agreement shall be interpreted, construed and governed according to the laws of the State of Florida without regard to conflicts of laws principles that would result in the application of the laws of any other jurisdiction. Both parties agree that all disputes, claims, actions or lawsuits between them arising out of this Agreement, or for the alleged breach of this Agreement, shall be heard and determined by a state court sitting in Sumter County Florida. Nothing contained within this Agreement shall be construed to allow or permit the party bringing any claim, action or lawsuit to do so in any Court other than state courts sitting in Sumter County, Florida and constitutes an express and irrevocable waiver of litigating any dispute in a Federal Court. Furthermore, each party waives its right to a jury trial.

16. Waiver of Jury Trial. THE PARTIES WAIVE ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY LAWSUIT BROUGHT BY ANY PARTY UNDER OR PURSUANT TO THIS AGREEMENT.

17. Attorney's Fees. The prevailing party in any litigation to enforce the terms of this Agreement shall be entitled to have its reasonable attorney's fees and costs reimbursed by the non-prevailing party.

18. Severability. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be prohibited or invalid under applicable law, the Agreement shall be interpreted as if such invalid covenants were not contained herein.

19. Other Agreements. This Agreement is the whole Agreement and is the only Agreement between the parties. This Agreement supersedes any prior oral or written contracts between the parties. This Agreement may not be amended except in writing signed by the parties.

20. Counterparts and Facsimile Signatures. This Agreement may be executed in two or more copies, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such copies. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

21. Exhibits and Interpretation. The terms of any Exhibits incorporated into this Agreement shall be supplemental to the terms of the Agreement. Any contradictory or vague terms shall be resolved in favor of construing provisions of the Agreement as valid and reasonable.

For SUMTER COUNTY:

Don Burgess, Chairman

Attest:

Connie Webb, Deputy Clerk

For Grand Masters GRAND MASTERS DRAGON BOAT CLUB OF THE VILLAGES, INC.:

Name: _____
Title: _____

Attest:

Name: _____
Title: _____